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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

6 TROY MARTIN,

7 NO. C12-2016-RSL-JPD

8 Petitioner,

9 v.

10
11 REPORT AND
12 RECOMMENDATION

13 CLAUDIA BALDUCCI,

14 Respondent.

15 Petitioner Troy Martin seeks 28 U.S.C. § 2254 habeas relief from the revocation of his
16 probation in October 2012. (Dkt. 3; *see* Dkt. 4 (construing petition as filed pursuant to § 2254
17 and substituting respondent).) Respondent argues that the habeas petition should be dismissed
18 as mooted by Mr. Martin's release from custody or for failure to exhaust state-court remedies.
19 (Dkt. 10.) The Court recommends DISMISSING Mr. Martin's § 2254 habeas petition without
20 prejudice because he has not exhausted his state-court remedies. 28 U.S.C. § 2254(b)(1)(A).
21 The Court recommends DENYING issuance of a certificate of appealability because Mr.
22 Martin cannot show a debatably valid claim of the denial of a constitutional right. *See* 28
23 U.S.C. § 2253(c)(2).

24
I. DISCUSSION

25 Respondent argues that the habeas petition is moot because although Mr. Martin filed
26 the petition while incarcerated in November 2012, he was released in December 2012. This

1 argument is foreclosed by *Chacon v. Wood*, 36 F.3d 1459, 1463 (9th Cir. 1994), *overruled on*
 2 *other grounds*, 8 U.S.C. § 2254(c). In *Chacon*, the Ninth Circuit recognized an irrefutable
 3 presumption that collateral consequences result from any criminal conviction, explaining that
 4 “[o]nce convicted, one remains forever subject to the prospect of harsher punishment for a
 5 subsequent offense as a result of federal and state laws that either already have been or may
 6 eventually be passed.” *Id.*; *accord Chaker v. Crogan*, 428 F.3d 1215, 1219 (9th Cir. 2005).

7 Nonetheless, respondent has demonstrated that Mr. Martin has not exhausted his state-
 8 court remedies. A habeas petitioner satisfies the exhaustion requirement only if the petitioner
 9 fairly presented the claim to the highest state court available. *Vang v. Nevada*, 329 F.3d 1069,
 10 1075 (9th Cir. 2003). Represented by counsel, Mr. Martin moved to dismiss his own direct
 11 appeal of his probation revocation. (Dkt. 10, at 3–6.) The King County Superior Court later
 12 denied Mr. Martin’s state-court petition for habeas corpus relief (Dkt. 10, at 7) and there is no
 13 indication that he ever appealed that decision. Mr. Martin therefore never presented his present
 14 habeas claims to the highest state court available. Mr. Martin’s habeas petition should be
 15 dismissed without prejudice for failure to exhaust state-court remedies.

16 If the district court adopts the Report and Recommendation, it must determine whether
 17 a certificate of appealability (“COA”) should issue. Rule 11(a), Rules Governing Section 2254
 18 Cases in the United States District Courts (“The district court must issue or deny a certificate
 19 of appealability when it enters a final order adverse to the applicant.”). The Court recommends
 20 denying issuance of a COA because no jurist of reason could disagree with the Court’s
 21 decision to dismiss Mr. Martin’s habeas petition without prejudice for failure to exhaust state-
 22 court remedies, or could conclude that the issues deserve encouragement to proceed further.

23 See 28 U.S.C. § 2253(c)(2); *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

24 II. CONCLUSION

25 The Court recommends DISMISSING Mr. Martin’s § 2254 habeas petition without
 26 prejudice because he has not exhausted his state-court remedies. 28 U.S.C. § 2254(b)(1)(A).

1 The Court recommends DENYING issuance of a certificate of appealability because Mr.
2 Martin cannot show a debatably valid claim of the denial of a constitutional right. *See* 28
3 U.S.C. § 2253(c)(2).

4 DATED this 9th day of May, 2013.

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6 JAMES P. DONOHUE
7 United States Magistrate Judge